

[4510-30]

DEPARTMENT OF LABOR

Employment and Training Administration

[20 CFR Part 640]

STANDARD FOR BENEFIT PAYMENT
PROMPTNESS—UNEMPLOYMENT COM-
PENSATION

Revision of Standard

AGENCY: Employment and Training
Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This is a proposal to revise the Secretary of Labor's Standard for Benefit Payment Promptness. Criteria for promptness in first payments of unemployment benefits are changed so as to increase progressively over the next three years. In addition, enforcement procedures are revised and other changes are made to improve the Standard.

DATES: Comments: All comments on the changes in this proposal must be received on or before December 22, 1977.

PROPOSED EFFECTIVE DATE: Thirty days after publication of the final rule in the FEDERAL REGISTER.

ADDRESSES: Send comments on this proposal to the U.S. Department of Labor, Employment and Training Administration, Room 7000, Patrick Henry Building, 601 D Street, NW., Washington, D.C. 20213.

All comments received will be available for public inspection during normal business hours in Room 7000 at the above address.

FOR FURTHER INFORMATION CON-
TACT:

Lawrence E. Weatherford, Jr., Administrator, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213, telephone 202-376-7032.

SUPPLEMENTARY INFORMATION: The Social Security Act requires that States' laws must provide for methods of administration which will insure full payment of unemployment compensation when due.

On July 23, 1976, final regulations were published in the FEDERAL REGISTER which established a Benefit Payment Promptness Standard for the Federal-State Unemployment Compensation Program. In that document the Department of Labor undertook to republish the Standard in March 1977, with such revisions as appeared to be supported by studies and experience. Studies were made and a further study is underway. Additional responsibilities of the Department in 1977 have intervened to delay republication of the Standard until now, but the studies completed have been analyzed and on the basis of the analyses and experience a number of changes are proposed to further improve the Standard.

The Department of Labor anticipated that the Standard would result in significant improvements by the States in the promptness of first benefit payments. A majority of the States have shown progressively better performance since publication of the Standard. A comparison of the cumulative averages for the 12 month period ending June 30, 1977, against the States' averages for the 12 month period ending June 30, 1976, shows that 40 States have equalled or improved their performance on intrastate claims and 45 States have equalled or improved their performance on interstate claims.

Some States are not currently meeting the criteria levels of 80 percent of intrastate first payments and 60 percent of interstate first payments issued within 14 days after the end of the first compensable week. The Department has concluded from studies conducted in 17 States that, with the exception of States which do not require a waiting week, the States will be able to attain those criteria levels. It is expected that as States continue to improve their performance, they will be able to meet more stringent promptness criteria.

Although studies of performance by the remaining States are still underway, the Department has sufficient information and experience to proceed with changes to the Standard and has considered the following alternatives:

1. Change the Standard as it applies to States which do not require a waiting period.
2. Establish criteria for subsequent payments.
3. Change the Standard by introducing higher criteria to be achieved over a three-year period.
4. Establish graduated criteria.

CRITERIA FOR NON-WAITING WEEK STATES

A non-waiting week State is any State whose law does not require that a non-compensable period of unemployment be served before the payment of benefits commences. The non-waiting week States are:

Alabama	Michigan
Connecticut	Nevada
Delaware	New Hampshire
Georgia	North Carolina
Iowa	Pennsylvania
Kentucky	South Carolina
Maine	Wisconsin
Maryland	

(North Carolina suspended its waiting week requirement through February 15, 1977; South Carolina suspended its waiting week requirement from February 15, 1977, through June 30, 1977; Wisconsin eliminated its waiting week requirement effective January 1977.)

None of the five non-waiting week States included in the 17 States studied by the Department had met either the intrastate or interstate criteria. Further, data for the 12 month period ending June 30, 1977, shows that five non-waiting week States are meeting the intrastate criteria and two non-waiting

week States are meeting the interstate criteria. These results tend to support the previous argument of these States that it is inequitable to use the same criteria as the basis for measuring the promptness of benefit payments in both waiting week and non-waiting week States. The Department believes that it is reasonable that non-waiting week States should be allowed 21 days to meet the intrastate and interstate criteria.

CRITERIA FOR SUBSEQUENT PAYMENTS

An analysis of data comparing State performance in processing first payments and subsequent payments did not provide totally conclusive results. It did indicate that States pay a higher percentage of subsequent payments within 14 days of the week ending date than they do first payments. The range in performance varied as much as it does for first payments. The results showed that once the payment process begins, States generally are able to pay subsequent claims promptly.

The information obtained relative to subsequent payment performance therefore supports the same conclusion that was reached after previous studies, i.e., first benefit payment promptness performance correlates with subsequent payment performance so that when first payment promptness is adequate, so is subsequent payment performance.

In addition, current reporting requirements do not include data on subsequent payments. It has been determined that to require such data would be an added reporting burden that would not justify the costs or results.

The Department accordingly concludes that establishment of criteria for subsequent payments is not warranted at this time.

HIGHER CRITERIA AND GRADUATED
CRITERIA

The studies completed thus far show that States with the best performance records are able to pay higher percentages of first payments at successive intervals so that 90 percent or better of intrastate first payments and 75 percent or better of interstate first payments are issued by the 35th day after the end of the first compensable week.

The studies show that, if payment delays due to controllable factors had been eliminated, the States in the studies would have issued 95 percent of intrastate first payments and 80 percent of interstate first payments within 14 days after the end of the first compensable week.

There are various factors categorized as uncontrollable delays, e.g., backdating effective date of claim, claimant or employer error, delay in delivery of mail, reversal of a determination, request for transfer of wage records for a combined-wage claim, and agent State delay or error, which make it virtually impossible for States to issue 100 percent of their first payments at a prescribed interval. The effects of other uncontrollable fac-

tors, such as workload variance and turnover in personnel, must also be considered. Theoretically, achievement of 95 percent of intrastate first payments and 80 percent of interstate first payments in 35 days would be equivalent to 100 percent performance as the accomplishment would include instances of uncontrollable delays. Setting the criteria levels at 90 percent for intrastate claims and 75 percent for interstate claims as the ultimate requirement at the 14 day interval are potentially attainable goals.

The Department proposes changes in the Standard which establish higher criteria levels in successive years over a three year period. Thereafter, States would have to meet the highest criteria prescribed by the Standard.

The proposed changes will require States to issue by:

March 31, 1978. 83 percent of intrastate first payments and 65 percent of interstate first payments within 14 days after the end of the first compensable week for waiting week States and 21 days for non-waiting week States; and 90 percent of intrastate first payments and 75 percent of interstate first payments within 35 days after the end of the first compensable week.

March 31, 1979. 87 percent of intrastate and 70 percent of interstate first payments within 14 days and 21 days respectively, for waiting week and non-waiting week States; and 93 percent of intrastate and 78 percent of interstate first payments within 35 days after the end of the first compensable week.

March 31, 1980. 90 percent of intrastate and 75 percent of interstate first payments within 14 days and 21 days respectively, for waiting week and non-waiting week States; and 95 percent of intrastate and 80 percent of interstate first payments within 35 days after the end of the first compensable week.

ENFORCEMENT PROCEDURES

The provisions of §§ 640.6 and 640.7 on review of State performance and performance plans of action are revised and new § 640.8 on enforcement is added.

In addition, the Standard previously set a 12 month period ending on June 30 each year as the period for measuring States' experience. Beginning in 1978 this period is changed to the 12 months ending on March 31 each year. The change will permit States to prepare any necessary plans of action for improving first payment performance to coincide with the preparation of their annual program and budget plan.

The Department of Labor has determined that this document does not contain a major proposal requiring the preparation of an Economic Impact Statement under Executive Order 11949 and applicable authority.

This document was prepared under the direction of Lawrence E. Weatherford, Jr., Administrator, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213. Telephone: 202-376-7032.

Accordingly, Part 640 of Chapter V of Title 20 is proposed to be revised as set out below.

Signed at Washington, D.C., on November 17, 1977.

ERNEST G. GREEN,
Assistant Secretary
for Employment and Training.

PART 640—STANDARD FOR BENEFIT PAYMENT PROMPTNESS—UNEMPLOYMENT COMPENSATION

Sec.

- 640.1 Purpose and scope.
- 640.2 Federal law requirements.
- 640.3 Interpretation of Federal law requirements.
- 640.4 Standard for conformity.
- 640.5 Criteria for compliance.
- 640.6 Review of State compliance.
- 640.7 Benefit Payment Performance Plans.
- 640.8 Enforcement of the Standard.
- 640.9 Information, reports and studies.

AUTHORITY: Sec. 1102, Social Security Act (42 U.S.C. 1302); Secretary's Order No. 4-75, dated April 16, 1975, (40 FR 18515); (5 U.S.C. 553). Interpret and apply secs. 303(a) (1) and 303(b) (2) of the Social Security Act (42 U.S.C. 503(a) (1), 503(b) (2)).

§ 640.1 Purpose and scope.

(a) **Purpose.** Section 303(a) (1) of the Social Security Act requires, for the purposes of Title III of that Act, that a State unemployment compensation law include provision for methods of administration of the law that are reasonably calculated to insure the full payment of unemployment compensation when due to eligible claimants. The Standard in this Part is issued to implement section 303(a) (1) in regard to promptness in the payment of unemployment benefits to eligible claimants.

(b) **Scope.** (1) The Standard in this Part applies to all State laws approved by the Secretary of Labor under the Federal Unemployment Tax Act (section 3304 of the Internal Revenue Code of 1954, 26 U.S.C. 3304), and to the administration of the State laws.

(2) The Standard specified in § 640.4 applies to all claims for unemployment compensation. The criteria for State compliance in § 640.5 apply to first payments of unemployment compensation to eligible claimants following the filing of initial claims and first compensable claims.

§ 640.2 Federal law requirements.

(a) **Conformity.** Section 303(a) (1) of the Social Security Act, 42 U.S.C. 503(a) (1), requires that a State law include provision for:

Such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

(b) **Compliance.** Section 303(b) (2) of the Social Security Act, 42 U.S.C. 503(b) (2), provides in part that:

Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is:

(1) . . .

(2) a failure to comply substantially with any provision specified in subsection (a) of this section;

the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such . . . failure to comply.

Until he is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State . . .

§ 640.3 Interpretation of Federal law requirements.

(a) **Section 303(a) (1).** The Secretary interprets section 303(a) (1) of the Social Security Act to require that a State law include provision for such methods of administration as will reasonably insure the full payment of unemployment benefits to eligible claimants with the greatest promptness that is administratively feasible.

(b) **Section 303(b) (2).** The Secretary interprets section 303(b) (2) of the Social Security Act to require that, in the administration of a State law, there shall be substantial compliance with the provision required by section 303(a) (1).

§ 640.4 Standard for conformity.

A State law will satisfy the requirement of section 303(a) (1), if it contains a provision requiring, or which is construed to require, such methods of administration as will reasonably insure the full payment of unemployment benefits to eligible claimants with the greatest promptness that is administratively feasible.

§ 640.5 Criteria for compliance.

The criteria in the schedule below shall apply in determining whether, in the administration of a State law, there has been substantial compliance with the provision required by section 303(a) (1) in the issuance of benefit payments to eligible claimants for the first compensable weeks of unemployment in their benefit years:

Percentage of first payments issued—days following end of first compensable week				
	14 days, waiting week States	21 days, nonwaiting week States ¹	35 days, all States	
Intrastate claims				
To be achieved by:				
June 30, 1977 . . .	80	80	80	
Mar. 31, 1978 . . .	83	83	80	
Mar. 31, 1979 . . .	87	87	93	
Mar. 31, 1980 . . .	90	90	95	
and thereafter.				
Interstate claims				
To be achieved by:				
June 30, 1977 . . .	60	60	60	
Mar. 31, 1978 . . .	65	65	75	
Mar. 31, 1979 . . .	70	70	78	
Mar. 31, 1980 . . .	75	75	80	
and thereafter.				

¹ A nonwaiting week State is any State whose law does not require that a non-compensable period of unemployment be served before the payment of benefits commences.

² All States.

A State will be deemed to comply substantially, as set out in §§ 640.2(b) and 640.3(b), if its average performance, for the period of review, meets or exceeds the applicable criteria set forth above.

§ 640.6 Review of State compliance.

(a) *Annual reviews.* The administration of each State law shall be reviewed annually for compliance, as set out in §§ 640.2(b) and 640.3(b). Annual reviews shall be for the 12-month period ending on March 31 of each year. An annual review with respect to any State shall be based upon the monthly reports of performance submitted to the Department by the State agency, any special reports of performance submitted to the Department by the State agency, any Benefit Payment Performance Plan applicable to the period being reviewed, any study or analysis of performance relevant to the period being reviewed, and any other audit, study, or analysis as directed by the Department of Labor.

(b) *Periodic review.* The administration of any State law may be reviewed at any other time, when there is reason to believe that there may be failure of compliance as set out in §§ 640.2(b) and 640.3(b). Such a review shall be based upon the same elements as may be required for an annual review.

§ 640.7 Benefit Payment Performance Plans.

(a) *Annual Plan.* An Annual Benefit Payment Performance Plan shall be submitted by a State agency to the Department of Labor when average performance over a 12-month period ending on March 31 of any year does not meet the criteria specified in § 640.5. An Annual Plan shall be submitted by July 31 fol-

lowing the applicable March 31, and shall be a plan for the fiscal year that begins on the succeeding October 1. An Annual Plan shall be subject to continuing appraisal during the period it is in effect, and shall be subject to modification from time to time as may be directed by the Department of Labor after consultation with the State agency.

(b) *Periodic Plan.* A Periodic Benefit Payment Performance Plan shall be submitted by a State agency when directed by the Department of Labor. A Periodic Plan may be in addition to, or a modification of an Annual Plan and may be required even though an Annual Plan covering the same period is not required. A Periodic Plan shall be subject to continuing appraisal during the period it is in effect, and shall be subject to modification from time to time as may be directed by the Department of Labor.

(c) *Content of Plan.* An Annual Plan or Periodic Plan shall set forth such corrective actions, performance and evaluation plans, and other matters as the Department of Labor directs, after consultation with the State agency.

§ 640.8 Enforcement of the Standard.

(a) *Action by the Department of Labor.* When a State agency fails, for an extended period, to meet the Standard set forth in § 640.4 or the criteria specified in § 640.5, or fails to show satisfactory improvement after having submitted a Benefit Payment Performance Plan of Action, the Department of Labor shall pursue the following remedial steps before considering application of the provisions of § 640.2:

(1) Initiate informal discussion with State agency officials pursuant to § 601.5 (b) of this Chapter.

(2) Conduct an evaluation of the State's benefit payment processes and analyze the reasons for the State's failure to meet the Standard.

(3) Recommend specific actions for the State to take to improve its benefit payment performance.

(4) Request the State to submit a plan for complying with the Standard by a prescribed date.

(5) Initiate special reporting requirements for a specified period of time.

(6) Consult with the Governor of the State regarding the consequences of the State's non-compliance with the Standard.

(7) Propose to the Governor of the State and on an agreed upon basis arrange for the use of expert Federal staff to furnish technical assistance to the State agency with respect to its payment operations.

(b) *Action by the Assistant Secretary.* If, after all remedial steps have been exhausted, a State fails to take appropriate action, or otherwise fails to meet the Standard specified in § 640.4, the Assistant Secretary for Employment and Training shall, after taking all factors into consideration, recommend to the Secretary of Labor that appropriate notice be sent to the State agency and that an opportunity for a hearing be extended in accordance with section 303(b) of the Social Security Act.

§ 640.9 Information, reports and studies.

A State shall furnish to the Secretary of Labor such information and reports and make such studies as the Secretary decides are necessary or appropriate to carry out this Part.

[FR Doc. 77-33659 Filed 11-21-77; 8:46 am]